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May 10, 2022

In re Google Digital Advertising Antitrust Litigation,
No. 1:21-md-03010 (PKC) (S.D.N.Y.)

Dear Judge Castel:

I represent Meta Platforms, Inc. (“Meta”) in the above-referenced multidistrict litigation (the “MDL”) and respectfully submit this letter on behalf of Meta to address certain disputed provisions in the parties’ proposed protective order (the “Protective Order”). In accordance with Rule 1.A of the Court’s Individual Practices, Meta notes that no upcoming conferences are currently scheduled in this matter.

After the Court’s April 19, 2022 hearing regarding the Protective Order, the parties met and conferred with respect to the disputed provisions in the Protective Order. The parties reached agreement on a number of those issues, as reflected in the proposed Protective Orders submitted by Google and Plaintiffs today, May 10, 2022.

Meta understands, however, that the following three issues in Paragraph 12(c) of the Protective Order¹ remain in dispute:

1. **Receiving Party’s Attachment of, or Quotation from, a Clawed Back Document During Privilege Challenge (§ 12(c) & n.6):** Meta agrees with Google that the Receiving Party’s privilege challenge for a clawed back document cannot quote from the clawed back document in or attach the clawed back document to the Receiving Party’s motion.² To permit such liberal use of privileged information in motion papers

¹ The citations to the Protective Order refer to the draft proposed order that Meta understands Google is submitting as Exhibit A with its submission.

² Meta’s understanding of Plaintiffs’ position on this issue is based on the most recent draft of the proposed Protective Order that Plaintiffs circulated to Meta on May 9, 2022. At 11:16 p.m. on the day the

would eliminate the confidentiality protections of the clawback, as even if the motion is filed under seal, that motion and its attachments would be readily accessible to any party or attorney who may access the sealed content. To the extent the Receiving Party, in connection with its privilege challenge, desires the Court's review of the substance of a clawed back document, then, consistent with this Court's guidance at the April 19, 2022 hearing, the Producing Party shall submit the document to the Court for *in camera* inspection.

2. **Composition of the Plaintiffs' Privilege Committee (¶ 12(c) & nn.7-8):**
Meta takes no position on this issue.

3. **Receiving Party's Review of Clawed Back, Privileged Documents (¶ 12(c) & nn.6-7):** Meta agrees with Google that if a Receiving Party has not already reviewed a document subject to the Producing Party's clawback notice, the Receiving Party may not review such document following the clawback notice. This is consistent with Federal Rule of Civil Procedure 26. To the extent that the Receiving Party already had reviewed the privileged information at the time the Producing Party issued its clawback notice, Meta agrees to the procedures set forth in Paragraph 12(c) of the Protective Order, which permit members of the Plaintiffs' Privilege Committee and/or the Defendants' Privilege Committee to further review the already-seen document solely for the purpose of determining whether to challenge the clawback.

Meta further understands that Plaintiffs and Google dispute certain provisions concerning confidentiality protections for source code productions. (*See, e.g.,* ¶ 1(u) & App'x C.) Meta also takes no position on these issues.

Respectfully submitted,

/s/ Kevin J. Orsini

Kevin J. Orsini

The Honorable P. Kevin Castel
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

cc: All Counsel of Record (via CM/ECF)

revised Protective Order was due, Plaintiffs indicated a change in their position on this issue, but did not provide Meta with a revised draft of the Protective Order.